IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1510 of 2001

to

FIRST APPEALNo 1516 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GENERAL MANAGER ONGC LTD.

Versus

SPECIAL LAND ACQUISITION OFFICER

Appearance:

MR RAJNI H MEHTA for Petitioner

MR AJ PATEL for Respondent No. 2

MR MUKESH PATEL, AGP, for respondent No.1.

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE J.R.VORA

Date of decision: 12/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

In this group of seven appeals, at the instance of the appellant, Oil and Natural Gas Corporation Ltd (ONGC for short), under section 54 of the Land Acquisition Act, 1894 (Act), the challenge is against the common judgment and award dated 7th October, 1999, recorded by the learned Assistant Judge, Mehsana, in Land Acquisition Case Nos.1510/95 to 1516/95. Since, common questions have been involved in this group of appeals, they are being disposed of by this common judgment.

Respondent No.1, Special Land Acquisition Officer, Mehsana, passed award under section 11 of the Act on 16.11.94 in Land Acquisition Case No.2/91. The notification under section 4(1) of the Act came to be published on 15.9.92, followed by notification under section 6(1) of the Act on 31.3.93, for the purpose of acquisition of the land situated in village Ijpura Jotana, Tal: Mehsana, Dist: Mehsana, for the benefit of the appellant, ONGC.

Respondent No.1, Land Acquisition Officer, offered an amount of Rs.2.10 per sq. mtr. to the owners of the land covered under the said notification, for the purpose of acquisition. The claimants, who are the owners of the land, being aggrieved by the said award made references under section 18 of the Act on 12.12.94 to the Collector of Mehsana, claiming an amount of Rs.30 per sq. mtr., who, made reference to the District Court, Mehsana on 7.8.95. Seven references, at the instance of the owners of the land, were consolidated and common evidence was led, followed by common award in Land Acquisition Case Nos.1510/95 to 1516/95. Before the reference Court, on behalf of the claimants-owners, reliance was placed on the evidence of witness Lalji Gova Desai. They, also, placed, reliance on three awards of the District Court, Mehsana, which, also, passed the award under challenge before us. No evidence oral or documentary, was led either by the respondent No.1, Land Acquisition Officer or the acquiring body ONGC before the reference Court.

Upon assessment of the evidence, essentially, consisted of the testimony of common witness Lalji Desai, the sole witness and the three awards, the reference Court allowed the references and awarded Rs.15 per sq. mtr. by way of additional amount of compensation. The Land Acquisition Officer had assessed and had offered Rs.2.10 ps. per sq. mtr. Therefore, the reference Court found the claimants

entitled to get market price of their acquired lands at the rate of Rs.17.10 ps. per sq. mtr., as compensation under section 20(1)(a) and solatium under section 23(2) of the Act with interest on the market price of acquired lands at the rate of 9% per annum from the date of taking over possession till one year and thereafter at the rate of 15 per cent till realisation from the date of award or from the date of taking possession, whichever is earlier in time, by passing the common judgment recorded on 7th October, 1999, which is assailed by the acquiring body, ONGC, before us, in this group of seven appeals, under section 54 of the Act.

We have, dispassionately, heard the learned advocates appearing for the parties. We have, also, examined the evidence of Lalji Gova Desai and the three awards relied on by the reference Court. The entire record was made available to us, by the learned advocates appearing for the parties, during the course of hearing. We were, also, taken through the relevant provisions of the Act, as well as the case law, to which reference will be made later on, as and when required during the course of the judgment.

Learned advocate, Mr Mehta, while appearing for the appellant, in this group of appeals, has raised the, only, contention that it is the obligation of the claimants to dislodge the amount offered and assessed by the Land Acquisition Officer in respect of the acquired land before the reference Court when the reference is made under section 18 of the Act. He has, further, stated, vehemently, that the claimants have failed to discharge such an obligation and, therefore, the additional amount of Rs.15 per sq. mtr. awarded by the reference Court in relation to the acquired land to the claimants, is illegal and unreasonable and deserves to be quashed, restoring the offer or assessment made by the Land Acquisition Officer at the rate of Rs.2.10 per sq. mtr. In support of this contention, he has, also, submitted that the sale instances referred by the Land Acquisition Officer should not have been straightaway discarded, while accepting the documentary evidence in the nature of three awards, whereas, learned advocate Mr.Patel while appearing for the respondent No.2, in this group of appeals, has submitted that the assessment of market value made by the reference Court is quite just and reasonable, requiring no interference.

Following aspects, which have emerged unquestionably from the record of the present case, may be highlighted, at first:

1. The parcel of the land acquired are situated in village Ijpura, which is about 4 k.m. away from village Chalasana.

2. Acquired lands are irrigated and the owners of the lands were taking three crops per year before acquisition.

3. Village Santhal, Khadalpur, Kasalpura and Modipur are adjoining villages to Ijpura village.

4. The sales instances relied on by the Land Acquisition Officer are not produced before the reference Court.

5. The respondent, Land Acquisition Officer and the acquiring authority have not examined any witness nor they have produced any documentary evidence.

6. Ex.14 is the testimony of Lalji Gova Desai, who is one of the claimants. He has clearly testified that the claimants were doing agricultural operations in the acquired lands and they were taking three crops in a year because of irrigation facility and the crops included Arenda, Mung, chilly, Millet (Bajri), etc.

The award passed by the Mehsana District Court, produced at Ex.15, is in respect of acquisition of land situated in village Santhal. It pertained to L.A.R. No.1348/92 to 1349/92. Those parcels of lands were also acquired for the purpose of ONGC by virtue of notification dated 6.1.87 under section 4(1) of the Act and the District Court, Mehsana, had awarded total amount of Rs.10 per sq. mtr. It is clear from the testimony of Lalji Desai, the only witness, who has stepped in the witness box, that too, on behalf of the original claimants, that the parcel of land covered under the said acquisition was belonging to one Ramanbhai whose field is about 3 to 4 fields away from his acquired land. It may be recalled even at the cost of repetition that notification under section 4 of the Act, in the present group of cases was published on 15.9.92. It is, also, clear from the evidence that Ex.16 is the award of Mehsana District Court in respect of acquisition of certain parcel of land situated in village Chalasana of Mehsana District and it pertained to land acquisition reference Nos.1108/90 to 1118/90 and, incidentally, it was also for the purpose of ONGC and the notification therein under section 4(1) was published on 31.7.86 and the District Court had awarded total amount

of Rs.10 per sq. mtr. covered under the said award.

Our attention is, also, drawn to the judgment of this Court upholding and confirming the award, at Ex.16, produced at Ex.17 and rendered in First Appeals No.46/96 to 56/96. Thus the appeals, at the instance of ONGC, against the award, as at Ex.16, came to be dismissed by the Division Bench of this Court on 15.4.96. It will be, also, interesting, at this stage, to refer to the award, which is relied on by the reference court and produced, at Ex.18, in which reference is to the acquisition of land situated in village Mathasur, Tal: Kadi, District Mehsana. Award, Ex.18, arise out of the land acquisition reference No.34/86 and the purpose of acquisition was for the construction of Suraj-Nandasan road. In that case, notification under section 4(1) of the Act was published on 26.6.82. The award was passed by the Mehsana District Court in which the total amount of Rs.21 per sq. mtr. came to be awarded. Notification under section 4(1) of the Act in that case was as early as in 1982 whereas in the present case, the date of notification is 15.9.92, more than after a decade.

It may, also, be stated at this juncture, that the lands acquired, in the present cases, were irrigated and fertile and the additional amount awarded by the reference Court is Rs.15 per sq. mtr. The lands covered under the aforesaid three awards, which have been, relied on by the reference Court were, also, agricultural lands. Reference Court has, also, considered the nature, type and utility of the lands acquired. The documentary evidence produced at Ex.19 to 25 are certified copies of village form No.7 to 12 of the claimants.

The reference of sale instances made by the Land Acquisition Officer, in his assessment or offer of Rs.2.10 per sq. mtr. had not been produced before the reference Court. Obviously, therefore, that could not form part of documentary evidence upon which reliance or evaluation could be made for the purpose of assessing the market value of the lands acquired in this group of matters. Mere reference of some of the sale instances in award by the Land Acquisition Officer without placing the material or documents before the reference Court would not be, in any way, useful and expedient for the purpose of evaluation and assessment of the market value, more so, when the documentary evidence in the nature of awards in respect of agricultural lands situated adjoining to the lands acquired under the present group of cases are placed on record. The reference Court has considered all the facts and circumstances and has, rightly, placed

reliance on the awards Ex.15, 16 and 18 which had become final. One of the awards in which the lands came to be acquired belonged to one Ramanbhai and the said land is hardly three fields away from the fields of claimant witness Lalji Desai, in which case, an amount of Rs.10 per sq. mtr. was awarded and the notification under section 4(1) of the Act had been issued on 6.1.87, whereas, in the case of award Ex.18, the notification under section 4(1) of the Act came to be issued on 26.6.82 and the District Court, Mehsana, the same Court which has passed the impugned awards, had awarded Rs.21 per sq. mtr. In absence of any documentary evidence more reliable, it cannot be contended that the awards Ex.15, 16 and 18 coupled with evidence of claimant witness Lalji Desai, Ex.14 and that too in absence of any evidence whatsoever on behalf of the original respondents and the acquired body, the assessment and evaluation of the market value as contemplated by the provisions of section 23 of the Act could not be said to be, in any way, unjust, unreasonable or perverse, requiring interference of this Court, in exercise of powers under section 54 of the Act.

After having taken into consideration the overall picture emerging from the record of the present case, copy, whereof, came to be supplied to us, in course of hearing, and in the background of the relevant proposition of law and considering the vehement submissions of the learned advocates appearing for the parties, we are of the clear opinion that this group of appeals, at the instance of the acquiring body, ONGC, is meritless and deserves only and only one fate and that is of dismissal, which, we hereby do it. The entire group of appeals is dismissed without any order as to costs.

Before parting, it was pointed out that the additional amount awarded by the reference Court to the claimants under the impugned awards has yet not been deposited or paid. Since the matters are very old and the claimants are coming from the middle strata of society, who are, agriculturists, the appellant ONGC is directed to deposit the amount due and payable under the award minus the amount deposited or paid, with interest within a period of three months.

(J.N.Bhatt, J.)

(J.R.Vora, J.)

(vjn)